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A TRI-CULTURAL LOOK AT LEGITIMACY AND ILLEGITIMACY USING AN EVOLUTIONARY MODEL

Mara D. Giles

The rules for legitimacy and illegitimacy are not universal, yet every culture classifies its children into valid and invalid. A review of the literature, including Teichman, Hendrix, and Davis, has indicated that legitimacy is a status of marriage. This status is determined by several factors including race, class, inheritance patterns, lineage systems, the role of fathers, and the position of women. European and sub-Saharan African cultures use these factors differently to validate the boundaries separating the legitimate from the illegitimate. Until as recently as thirty years ago, English culture asserted that a man had to be proven to be the legal father of a child in order for it to be considered legitimate and the most successful way to prove legitimacy was through marriage. In comparison, Evans-Pritchard's research on the Nuer has shown that as a patrilineal group the legitimacy of their children is based not only on marriage but on the strong sense of paternal kinship felt in the culture as well. Another contrast is Malinowski's study of the Trobriand Islanders, a matrilineal society that has a much simpler concept of legitimacy, for all children born to a mother belong to her line, yet there is still a preference for marriage. Thus it was through the institution of marriage that the concept of illegitimacy was formed. The focus of this paper is to examine illegitimacy as directly related to marriage in three distinct cultures.

The concepts of legitimacy and illegitimacy are prevalent cross-culturally, whether one examines them in a matrilineal society, a patrilineal one, or a modern state system. We use the terms legitimate and illegitimate with an intuitive understanding of the definition; yet how complete is that insight? Teichman (1978: 54) provides a broad definition of illegitimacy that helps our understanding:

An illegitimate child is one whose conception and birth did not take place according to the rules which, in its parents' community, govern reproduction.

within the framework of Engles's evolutionary model of the creation of fatherhood leading to the concept of legitimacy.

Hendrix (1996: 6) argues that marriage is a function of the father-child

But in order to get a clearer idea of what illegitimacy is, one needs to consider those rules: what are they? Are they similar in different societies or do cultures have widely varying rules pertaining to illegitimacy?

In this study, the notions of legitimacy and illegitimacy will be examined in three distinct cultures: the Trobriand Islanders who are a matrilineal society, the Nuer who are a patrilineage, and England, a modern state system. Additionally, the impact of fatherhood, marriage, children's resource-use rights and a child's socially accepted inclusion into its society will be investigated with regards to legitimacy and illegitimacy in the aforementioned groups. This analysis will be placed bond in order to "[specify] the father's claim over the child and his obligations to it." O'Brien (1981) also makes the argument that paternity creates "a right to a child." There is a link then between fatherhood and marriage. Using Engles's

evolutionary theory Hendrix (1996) states that when men recognize biological paternity, they view their children as part of their own bodies and see that they, too, have a role in reproduction. This in turn leads to the creation of fatherhood, so men will invest in the child by contributing resources to it and its mother. This is not as direct an involvement in rearing a child as the mother has with pregnancy and nursing, but it does provide the mother with safety and nourishment, which she passes on to the offspring. Resulting from the decision to make an investment of energy and resources in the mother and child, men want to make sure it is their own offspring in which they are investing. Paternity assurance is more difficult to determine when a woman has more than one male sexual partner and a man may be less willing to impart his resources to her if there is the chance that he is helping her to raise another man's child, for in essence this would mean that he is not really a part of the procreative process and is only being used as a material provider. Marriage stems, in part, from this new role of fatherhood and the passing of resources to the mother and her child. O'Brien (1981) adds that the control men have over the resources they provide to a mother and her child gave rise to sexual inequality and men's control over women and their children which helped to institutionalize marriage. Hendrix (1996) supports this by stating that men circumvented women and enhanced their role of father by claiming that without their direct support of the mother through provisioning she would not be able to properly or fully care for her child, thus reducing the woman's function to mere carrier of the child. Therefore the father's role evolved into

one of supreme value. In other words, as a result of the control of the distribution of resources to women and their children, men established control over the sexuality of women in order to reduce the chances of their supporting other men's children. The main way to do this was through the invention of monandrous marriage: the socially recognized union of a woman to one man (Hendrix 1996). In the case of matrilineal societies, it is the mother's brother who has the role of social father: he is the child's link to the rest of the community, acting as teacher, guardian, and guide. Although in these societies there seems to be less restriction regarding women's sexuality, there are still rules pertaining to the distribution of resources to men's sister's offspring, as well as the presence of monandry. This will be illustrated subsequently in the paper by a look at the Trobriand Islanders. Though there are exceptions of polyandry as well, they are too rare to be considered for these purposes. These exceptions are often ecological adaptations that, given another option, would not be observed in their society. For instance, the Inuit have practiced ecologically based polyandry. Because the harsh environment in which they live made survival of a woman and her children difficult, it sometimes to more than one man pulling in resources to supply a household. Both men would have sexual access to the woman, but the amount of conflict that created made that type of union both unstable and less than ideal. When the resources of both men were no longer needed, or when the conflict led to violence, the polyandrous situation dissolved immediately (Balikci 1970).

A socially acknowledged union is important because it announces the

claim a man has to a specific woman and the offspring they produce. Men use marriage to legally or socially lay claim to their children because they put in effort and resources into their maintenance. Inheritance becomes a factor to keep the link between child and social father known. Whether the inheritance is in the form of wealth, land, or status, what results is the recognition that the child is the legitimate child of said father because it was the product of the socially acknowledged union.

But what is socially acceptable marriage? Another way of asking this is do all marriages create legitimate offspring? For as Teichman (1978: 53) writes,

From the fact that the children of a forbidden sexual union are illegitimate, it does not follow that children of a sanctioned sexual union must necessarily be legitimate.

The answer lies in the intrinsic link between resource control and who has legitimate access to those resources. Kin, meaning direct descendants (offspring) and close relatives (siblings), of the distributors of resources are the first group to have legitimate access to those resources because of their close social and biological bonds to the distributor. The next legitimate group regarding resource-use rights is those living endogamously. Here endogamy means people living in the same region, or belonging to the same culture, race, religion, class, or the like. This is the beginning of the classification of people and the existence of status (those who belong) and statuslessness (those who do not belong); in other words, those who

have legitimate access to the wealth or status because of inclusion and those who do not because of their exclusion from the group to which the distributor of resources belongs. Some may argue that there are societies that have exogamous marriages and still produce legitimate children, but there are cultural adaptations that allow for these circumstances. Consider the Nuer and their capture of Dinka children. The abducted Dinka is considered at the very least to be the child of the captor and if adopted by the captor then the Dinka belongs to the father's lineage. If the Dinka is not adopted then he "attaches himself to his wife's people or to the people who have married his sister or daughter" (Evans-Pritchard 1951: 20) and his children, "having no lineage on the father's side, seek affiliation to the mother's lineage" (Evans-Pritchard 1951: 25). So it is that the members of the captor's household may not marry the captured Dinka and if he is adopted he may not marry any girl from his Nuer pater's lineage. Conversely if he is not adopted, then he may marry a girl from his captor's lineage because he does not legally belong to it. Thus while the Nuer practice "clan exogamy" (Evans-Pritchard 1951: 29) they still look for other Nuer, or people assimilated into Nuer culture. Therefore it is still a cultural endogamy, falling into the description of endogamous marriage just presented.

Additionally marriage, when used as a distributive force of wealth, is another way to create status and statuslessness, thus legitimacy and illegitimacy. Recall that socially accepted marriage is not only a way to claim rights over women's reproduction but to claim rights over the children produced. The advantage for a man is

not only to be a part of the reproductive process but also to have someone to inherit from him and to continue his line, whether socially or biologically, acknowledging the less obvious link of child to social father. This is the case whether it is the mother's brother who has the important role of socializing the child in the Trobriand Islander's and other matrilineal societies, or the pater in the Nuer and similar patrilineages, or the patriarch in the English or other dowry-based household. This passing of resources gives a man a sense of contribution to the well-being of the child in his care. It acknowledges the inclusion of the child into his lineage or family as well as announces to the community the man's responsibility to socially prepare the child for its own role in society. All of this also resonates the urge for a man's self-continuity and his connection to procreation, whether through direct or inclusive fitness. The advantage for the child of having a man claim rights over him or her is to have someone from whom the child can inherit and to benefit his or her potential children. For instance, in lineage systems where resources belong to a corporate descent group and cannot be directly devolved, the use of the resources, such as land, can be passed on (Goody 1976). Fathers and lineages that have worked hard to socially establish themselves by increasing their wealth have higher status, thus pass on a greater right to use the land to their children (Weiner 1979) or more control over who uses what part of the land. By contrast, inheritance systems that have personal property pass the land and capital directly to children. Men that have worked harder to make capital gains, have more wealth to impart to their offspring (Goody 1976). Thus in either

type of system, claiming a right to a child incites that child to claim use of land or inheritance of assets from the father.

Legitimacy pertains to only certain children being able to lay claim on the father though. Because resources are limited to a certain extent in all societies, accordingly, families want to retain as much control over the land and material goods and status as possible. Therefore creating endogamous classifications keeps those resources closer to the distributor by stating only those who fall into his particular category can inherit available wealth. Socially acceptable marriage is a derivative of endogamous classifications because marrying endogamously retains the wealth in a particular group. Since both a child's parents belong to the endogamous group, so does the child, thus it is considered a legitimate inheritor. Consider an example,

In early times the Church always demanded that the parties to a Christian marriage both be Christians. Marriages of Christians to Jews or infidels were illegal...Any children of such a union would of course be illegitimate (Teichman 1978: 35).

Although exogamous unions, whether they are inter-religious, inter-caste, inter-racial, etc. do take place, as stated above they are often considered socially illegal and the products of such unions are not recognized as legitimate, i.e. within the rules. Prescribing endogamous marriages helps to prevent mixing of groups and to reduce illegitimacy. One defense for this way of thinking may have been the difficulties in trying to decide to which group did the child belong, for being of

both groups it was a "misfit in the status system" (Hendrix 1996: 29). But in reality, these rules are used "to organize and limit claims against the family estate" (Hendrix 1996: 84) or the group to which the distributor of resources belongs. Consequently, legitimacy is a status of marriage, but not just any type of marriage. It is the status of the socially acceptable marriage and is a way to create rules of inclusion and exclusion for resource and status distribution.

Illegitimacy of children in its simplest form is a child born of incest. But incest as viewed in our culture, i.e. sexual relationships (and children born thereof) between near-related kin or persons fulfilling those roles, is not so viewed in all cultures. Near-relatedness begins with the nuclear family: parent-child and sibling-sibling, and spreads out from there to the next most closely blood-related family members. Most societies do in fact forbid sexual intercourse between relatives in the nuclear family (Murdock 1965). While some cultures, such as our own, extend the prohibition to non-genetically related individuals performing roles of the nuclear family, such as step-parents and stepsiblings, other societies sanction some biologically incestuous sexual relationships because they are not socially incestuous. For example, Montague (1971) noted that the Trobriand Islanders do acknowledge sister-brother, mother-son, and father-daughter incest. But the latter is often overlooked because technically the father is of a different lineage than the daughter and is not considered either social or biological incest. Any offspring resulting from such a union are not classified as illegitimate solely based on the father-daughter relationship. (The

product child may be illegitimate for other reasons though.) On the other hand, mother-son and sister-brother incest will always produce illegitimate offspring. These relationships are taboo because since both parties of the union belong to the same lineage, it is social incest.

For the Trobriand Islanders, all forms of illegitimacy stem directly from the incest taboo. Although Malinowski reported that the Trobriand Islanders did not understand the connection between sexual intercourse and pregnancy, the reality is that they have a very complex mythological explanation for pregnancy to accommodate their cultural forms of inclusion and exclusion (Montague 1971). Since the Trobrianders are a matrilineal people, lineage passes through the mother, but rank and land-use rights pass through the father. However this society also practices avunculocality. The maternal uncle is socially responsible for the children of his sister; as Weiner (1979: 329) explains: "the avuncular relationship replaced the paternal, and the authority of descent superceded the primacy of the nuclear family." In order to understand the Trobrianders' sense of illegitimacy, we must first understand the relationship between sister and brother. Because of the nature of the matrilineal-avuncular relationship, a brother and sister have a strong social bond with one another that leads to physical proximity and emotional closeness. In context of child rearing they are much like husband and wife. However, because of the strict incest taboo between sister and brother they must perform avoidance behaviors constantly.

If an unmarried Trobriand woman gives birth to a child, any married couple that lacks or desires a

child can adopt it. If there is no one else to adopt the infant the responsibility falls upon the mother's brother since he is also the child's main male authority figure. However, by adopting it, this indicates that the child's maternal uncle is also its father. But since the infant's mother is also the uncle's sister, this implies incest, albeit social incest. However, this is taboo and thus the child would remain illegitimate. Yet Malinowski had claimed that the Trobrianders had no concept of the link between sex and procreation so why should this concept of illegitimacy exist? Montague (1971: 365) refutes this idea arguing that "[t]he Trobriand Islanders are, and apparently always have been, fully aware of the correlation between sexual intercourse and pregnancy." The Trobrianders believe in spirits of ancestors that desire to reincarnate themselves, and so they take on a child-spirit form called a waiwaia that inserts itself into the woman through her head or vagina, the latter of which can be opened in ways other than sexual intercourse (Montague 1971). Once the waiwaia is housed in the woman's body, it needs the menstrual blood for nourishment. A man's semen, but not necessarily the husband's, is needed to keep the blood from flowing out of the mother's womb. The waiwaia enters this substance and uses it to take on physicality, which is then molded into human form by the husband's proximity to the mother during pregnancy. When the infant is born, the husband of the woman legitimizes the child through the ritual "exchanges of objects...which establishes a relationship of equality" (Montague 1971: 361) between the husband as father and the child. This act gives the child rank and if the child is a son, the use of the lineage's land, a

uniquely human employment. At this point rank becomes very complex and since inter-rank-class unions are possible because legitimization is still consummated by the husband (Montague 1971), I will not examine the various rank systems.

Thus the two most basic forms of Trobriand child legitimacy are attained through a husband. The first form of legitimization is that a husband, in passing land use and possession rights to a child, classifies it as legitimately human as opposed to animal, for animals do not own or work land as humans do. The second form of legitimization is that the presence of a husband, and hence a man from a different lineage than the mother, makes a child a culturally acceptable human, implying that the child is not the product of incest, at least social or terminological incest. Thus we see that marriage is important because it symbolizes the legitimacy of the child produced.

Leaving the genetic and psychological effects of incest aside, why should products of incest be socially problematic? What would lead them to be illegitimate? For one thing, there is the complex matter of classification: who is this individual in relation to its kin? With lineage systems in particular, a confusion of this sort would make it difficult to categorize the child into its separate marriageable and non-marriageable groups. In societies where there are already limited numbers of marriageable people to choose from, it is necessary to classify people properly in order to avoid incestuous unions, whether they are biologically or socially incestuous. For another thing, there is the issue of breaking the incest taboo that exists in the society, for as noted above, these definitely exist for the

nuclear family in most societies, if not for all classificatory mothers, daughters, fathers, and sons. By virtue of the fact that the taboo, i.e. cultural law, would have been broken would make the offspring of the union illegitimate because of its illegality. Marriage then seems to be an acceptable and effective solution for controlling this form of illegitimacy, for it gives people culturally appropriate sexual access to one another in order to produce children that can be classified into marriageable and non-marriageable groups themselves.

The Nuer also abide by an incest taboo to determine legitimacy and illegitimacy and have very strict rules as to who is non-marriageable based on both social and biological incest. These include,

the clan kinship of the common spear; the both kinship of collateral lineage and of adoption; uterine kinship; kinship through the genitor; the kinship of cognation; kinship which the birth of a child creates between affines; the kinship acknowledged by acceptance of bridewealth; and the kinship by analogy of the age-set (Evans-Pritchard 1951: 34).

These kinships are the result of the link to the paternal line as well as the maternal. Since the Trobriand Islanders have a matrilineal system, they are concerned with incest and illegitimacy only in relation to the mother's line. But the Nuer, being a patrilineal society, understand that socio-biological link of father to child in addition to the mother's connection. Consequently their non-marriageable rules become more intricate since more factors are involved,

and this in terms of illegitimacy makes "social control of sex and reproduction...more repressive" (Hendrix 1996: 77). So if a Nuer child is born out of wedlock, not only is it using resources that the mother's family needs compensated by the genitor's lineage, but it also has not been classified into its framework of interlineage relationships (Evans-Pritchard 1951) and its marriageable and non-marriageable categories to avoid incest. For this reason, although premarital sex is not frowned upon, premarital birth is.

Additionally, the Nuer are a brideprice society and though they comprehend paternity certainty and have land-use rights and status inheritance, children are also valued as resources themselves. To understand then how the Nuer determine child legitimacy, one must look at the objectives brideprice accomplishes. Firstly, it legitimizes the marriage union as proof that it is not incestuous; secondly, it creates affinal bonds that are important for alliance as well as for kinship categorization of marriageable and nonmarriageable; thirdly, it provides a family with economic replacement of female labor. Through payment of brideprice, children are included in their father's lineage, but as Evans-Pritchard (1951: 98) explains it does not necessarily have to be the biological father that makes a claim on a child for "[t]he man in whose name the cattle were paid is always their pater, the legal or lineage father, whether he is their genitor or not." So when a Nuer woman has a baby out of wedlock, it is still cared for and belongs to her lineage until a man pays her brideprice and legitimizes her child by making a claim on it, allowing the child then to make claims back on him (Hendrix 1996). However, if the legal husband, the one

who paid the brideprice, dies and his widow becomes sexually involved with a man not of her dead husband's lineage, any children she bears to the lover are still born to her husband's lineage unless the lover selects to pay the brideprice to wed her and claim his children legally. Thus it is again through the transaction of marriage that rights of inclusion over a child are claimed and that enables a child to inherit resources from its father.

Davis (1939a : 224) states that "[a] universal rule is that the illegitimate child does not acquire full membership in the family group or family line of his parent" because it is not the product of the socially sanctioned union and not legally bound to the lineally significant parent. Since in the majority of all societies it is the woman who is economically dependant on her husband for reasons already shown, inheritance is passed down from the father to the child, or in the case of matrilineal systems from the mother's brother to the child. But an illegitimate child, not being a full member of a family and thus not a legal successor of a social father also cannot inherit from him. Davis puts this very succinctly:

[s]ince the child does not descend from the father and does not bear his name, it follows that the father's family...will scarcely wish, as a family, to see property inherited by a filius nullius...thus the rule of noninheritance is a corollary of the rule of nondescent, both being part and parcel of the reproductive structure. (1939a : 225)

This is especially true as societies become more highly stratified, for as increase of inheritance of wealth and

status are achievements of power and social dominance, there will be less inclination by families to share that power with illegal members of their group.

In hierarchical societies like England, "[l]egitimacy is relative to the legal system" (Teichman 1978: 3) which makes both illegitimacy and legitimacy legal statuses based on legal marriage. According to English law, a legal marriage is one that is not voidable, where void means the law does not acknowledge the marriage. For example, a void marriage in England would be a polygynous union for the law does not recognize that as a legal form of marriage and any children born to such a union would be illegitimate.

Because of the nature of the dowry system described by Goody (1976), English marriages are monogamous. The fact that there is land tenure means there are limited resources to pass on to offspring. The combination of monogamy and scarcity of assets leads to fewer descendants and less spreading of wealth. Goody (1976) discusses the idea of diverging devolution in which both sons and daughters received inheritance to keep them at their level in the hierarchy and thus in the socially dominant positions. (For those families that were poor this would not have mattered much, but laws are often written to benefit those who have wealth and power to lose.) In monogamy, the birth or survival of sons is not guaranteed so wealth is often passed to a daughter. Originally the property remained her father's until she married when it passed to her husband. "In law, in lineage, and in matters having to do with property, a woman, until modern times, was a kind of nullity" (Teichman 1978: 83). As this

was the case, children also did not legally belong to the mother since

[t]he rearing of children is a task which requires a considerable amount of money and cannot be successfully undertaken by an individual who is herself in a state of financial dependence (Teichman 1978: 18).

Reasons for this non-legal status of women had to do with the power to pass on inheritance and retain status and power in the man's name, whether the father or the husband. However, as a result of the stratified society, upper class women were able to voice their political and social opinions more freely because of the financial contributions they made to their marriage. Resulting from this, over the centuries there were legal changes in which women were allowed to own property and petition for divorce on their own. This implies that they were financially less dependent on their husbands than previously and could support themselves without their husbands' capital assistance. In 1839 legislation was passed that legally recognized women as mothers and guardians of their own children (Teichman 1978), because of the ability for them to own property and wealth and maintain their children themselves.

However, this new law pertained to legitimate children only. Because the illegitimate child was not born under a legal contract and therefore had no legal father, it was considered *filius nullius*, no-one's child. In fact, as late as 1958 English law stated "only a man can legitimate a child" (Teichman 1978: 33). An illegitimate child of the wealthy could be cared for by its mother and her family or maintained by its father

because of the available resources. But this in itself did not legitimate it. And what of the poor, who had no means to support their illegitimate children? In pre-Roman times through the 16th century, the illegitimate child was put to death and sometimes the mother was too, especially if the illegitimacy was the result of adultery. In the 1600s the church began to care for many of the illegitimate children, using them as labor resources. But when the church "began to feel overburdened by the large number of illegitimate in [its] care" (Teichman 1978: 25), it looked for a way to get financial help from the putative fathers. This was not always successful and in the 1800s the parish grew tired of the work involved in maintaining illegitimate children and passed the burden on to the mother. This action changed the way women were viewed in society because until this time "unmarried mothers had no legal rights at all in regard to their children" (Teichman 1978: 28) and now with the church demanding the responsibility be removed from it and put on the woman, there was the idea that an illegitimate child could even have a parent: the mother. Removing the label of *filius nullius* from the child changed the status of women from null to parents, thereby opening the door for them to petition for rights of custody and adoption of their own offspring born out of wedlock. As already stated, wealthier families did not have such difficulties for they had resources to provide. But poor women were limited in their options and severely stigmatized until they too could own property and participate in the workforce.

Adoption, not for the sake of finding an heir, but to remove the shame of illegitimacy posed a problem for it

was one thing to maintain an illegitimate child and quite another to legalize it. Several Adoption Acts from the first part of the 20th century gave an adopted child the same rights as a legitimate child (Teichman 1978). While this was acceptable when a man (whether the biological father or not) adopted a child because of his long-standing legal power and tradition to pass on inheritance, there was fear amongst lawmakers that illegitimacy would be abolished should women be allowed to adopt their illegitimate offspring for the purpose of legitimization, even if they had the financial freedom to do so. What lawmakers objected to was the potential disappearance of the institution of marriage, for if women could legitimize their own children born out of a sanctioned union, why have marriage to begin with? The segregation of legitimate and illegitimate was necessary in order to draw a distinct line between the legal and the illegal. This generated another whole set of arguments trying to maintain an ideology of legitimacy. If women could now pass inheritance to their own offspring, then that potentially made marriage obsolete. But lawmakers, as voices of the powerful in society, believed the sanctity of marriage and of the family were what separated the moral from the immoral, and they used these ideas to define legitimacy and illegitimacy instead. Today the debate regarding illegitimacy in many modern state systems is an issue of immorality over illegality.

But if at this point marriage is no longer a criterion for legitimacy, at least in some places, what then creates the illegitimate? Malinowski's Principle of Legitimacy states,

No child shall be brought into the world without a man, and one man, assuming the role of sociological father...the male link between a child and the rest of the community (Malinowski, 1930: 134).

Kingsley Davis (1939a) also asserts that a father is paramount for giving full social status to the child and its mother. But as just indicated, legal adoption of a child by an unmarried woman is possible for legitimization in the modern state society. Teichman (1978) introduces the concept of the family, whatever the societal concept may be, as criteria for inclusion or exclusion. As we saw with the Trobriand Islanders descent and thus family, was traced back through the mother's lineage. The Nuer trace descent patrilineally, which defines the family. England, too, traces family through males, the traditional guardians of "names, property-rights and power" (Teichman 1978: 62). In essence then, an illegitimate child is excluded from the family as a social unit, not allowed to partake of the social advantages of being included. Teichman herself argues against this point saying this is not enough of a definition for illegitimacy, but taking the three facets together, fatherhood, marriage, and family and all the rewards stemming from them, we see from where the concept of illegitimacy came.

We still return to the issue of adoption by women in modern state societies. As has been demonstrated, it is with the increase of the status and power of women that the concept of illegitimacy comes into question. Indeed punitive measures against transgressors become more egalitarian in societies where women have more power, but

they never disappear (Hendrix 1996). But as women are able to take more control over their lives, they become less dependent on men for their existence, and so do their children from a financial perspective. To be sure the combination of resource scarcity and paternity certainty created marriage, and while fatherhood, marriage, and the family are cross-cultural determinants for legitimacy and illegitimacy, if those commonalities are not necessary when women are financially independent, what answers for the persistence of legitimacy and illegitimacy?

Perhaps all the rules for deterring illegitimacy, such as early marital age for girls in some societies, or severe punitive action taken against the individuals for their indiscretion, or even the ability of women to adopt their own child are adaptive responses to a bigger picture. Perhaps the ultimate cause for having the separation between the legitimate and the illegitimate is a way to reduce the number of births so resources are not used so quickly. For by limiting the number of children born within a framework of rules, the number of people claiming resource-use rights is also limited. Early marital age for girls generally results in fewer illegitimate births. Punishment of offenders deters many others from having illegitimate children. Adoption of children by their own mothers is a solid legal solution making the illegitimate legitimate, and if the mothers are financially responsible for their offspring they may be less likely to have other children unless they can maintain them. Perhaps then the concept of illegitimacy is a method of population control used worldwide.

Or perhaps it is that need that most people have to feel included in the procreative process. Many men, who are

already greatly removed from it, desire to find ways to be a part of it and ensure their social connection to the child. We have seen this with the Trobriand Islanders whose concept of fatherhood is social and not completely biological, and with the Nuer who value children as resources and continuance of lineages, and with the English who found that when men were no longer the proverbial breadwinners they advocated still for marriage so they could remain connected socially and biologically to their children. So perhaps the concept of legitimacy is the result of a given man acknowledging his care for a child as a means to demonstrate his inclusion in that child's, and thus his society's and life's, existence. Or perhaps it is as Hendrix (1996) claimed, a power issue men enjoyed having over the sexuality of women and the children they produced, and they are loath to give that up.

Whatever the ultimate causes for illegitimacy are, whether resource distribution, fatherhood, or family, surely marriage is the defining factor. In all three societies at which were looked, marriage was used as the determinant of legitimacy and the exclusion of the illegitimate from perquisites of the legally sanctioned union. Having just looked at three cultures, though vastly different, one might question the assertion that marriage and legitimacy of children go hand in hand. But marriage is a cross-cultural phenomenon, as are legitimacy and illegitimacy.

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